
Introduced by Senator Vasconcellos

February 26, 1999

An act to add Section 3105 to the Family Code, relating to de facto parents.

LEGISLATIVE COUNSEL'S DIGEST

SB 1173, as introduced, Vasconcellos. De facto parents: visitation rights.

Existing law generally requires a court, in making a child custody order, to grant reasonable visitation rights to a noncustodial parent unless it would be detrimental to the best interest of the child. Existing law authorizes the court to grant reasonable visitation rights to a stepparent, grandparent, and if either parent of an unemancipated minor child is deceased, to the children, siblings, parents, and grandparents of the deceased parent, as specified.

This bill would define the term 'de facto parent' and authorize a court to conduct a proceeding to grant reasonable visitation rights to a de facto parent if the court makes required findings. The bill would also require the Judicial Council to monitor the implementation of these provisions and to report to the Legislature, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that
2 given the changing configuration of the California family,

1 California judges have found themselves in situations in
2 which they lack authority to act in what they deem to be
3 the child's best interest. Therefore, it is the intent of the
4 Legislature to provide California judges sufficient
5 authority to act in those cases where the child's best
6 interest currently cannot be considered.

7 SEC. 2. Section 3105 is added to the Family Code, to
8 read:

9 3105. (a) As used in this section, a 'de facto parent' is
10 a person who has assumed, for a substantial period of time,
11 the role of a parent, seeking to fulfill both the child's
12 physical and psychological needs for care and affection,
13 and who has received the child in his or her home and has
14 openly held out to the public that he or she is the child's
15 parent.

16 (b) Notwithstanding Section 3021, on petition to the
17 court by a de facto parent of a minor child, the court may
18 conduct a proceeding under this part to grant reasonable
19 visitation rights to the de facto parent if the court finds all
20 of the following:

21 (1) A preexisting parental relationship between the de
22 facto parent and the child was established with the
23 encouragement or assent of the child's parent or legal
24 guardian.

25 (2) Other than the custodial parent or legal guardian
26 of the child and the de facto parent, no person has
27 received the child in his or her home and has openly held
28 out to the public that he or she is the parent of the child,
29 or is exercising custody or visitation rights pursuant to a
30 court order.

31 (3) The child has engendered a bond with the de facto
32 parent.

33 (4) Visitation is in the best interest of the child.

34 (c) In determining whether to grant reasonable
35 visitation rights pursuant to subdivision (b), the court
36 shall give strong consideration to the wishes of the
37 custodial parent or legal guardian and shall balance the
38 interest of the child in having visitation with the de facto
39 parent against the right of the parent or legal guardian to
40 exercise their parental authority.



(d) At any time that a change of circumstances eliminates the factual basis of one or more of the findings in subdivision (b), or for other good cause, the parent may move that the court terminate de facto parent visitation and, upon that finding, the court shall grant the termination.

(e) The petitioner under subdivision (b) shall give notice of the petition to the parent or legal guardian of the child, and any person who has physical custody of the child, by personal service pursuant to Section 415.10 of the Code of Civil Procedure.

(f) If a protective order, as defined in Section 6218, has been directed to the de facto parent, the court shall consider whether the best interest of the child requires that visitation by the de facto parent be denied. It is presumed that it is not in the best interest of the child to have visitation with a de facto parent if that person has engaged in perpetrating acts of domestic violence, child abuse, or neglect, against the child or if that person has engaged in perpetrating acts of domestic violence against the child's parent or legal guardian within the previous five years.

(g) Visitation ordered pursuant to this section shall not create a basis for or against a change of residence of the child, but shall be one of the factors for the court to consider in ordering a change of residence.

(h) When a court orders visitation pursuant to this section, the court, in its discretion, may, based upon the relevant circumstances of the case, make the following orders:

(1) Allocate the percentage of de facto parent visitation between the parents for purposes of the calculation of child support pursuant to the statewide uniform guideline (Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9).

(2) Notwithstanding Sections 3930 and 3951, order a parent or de facto parent to pay to the other, an amount for the support of the child. For purposes of this paragraph, 'support' means costs related to visitation, including any of the following:

1 (A) Transportation.

2 (B) Provision of basic expenses for the child, including
3 medical expenses, day care costs, and other necessities.

4 (i) The Judicial Council shall monitor the
5 implementation of this section and shall report twice to
6 the Legislature, on January 1, 2001, and on January 1, 2003,
7 regarding the effect of this section during the preceding
8 two-year period.

9 (j) Nothing in this section shall be construed to require
10 any custodial parent to pay child support or other
11 remuneration to any person determined to be a de facto
12 parent.

